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32709	7590	10/30/2007		
Gateway Inc Patent Attorney PO Box 2000 N. Sioux City, SD 57049			EXAMINER WEI, ZHENG	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/720,782	Applicant(s) <i>mn</i> ASSAF, MAHMOUD	
	Examiner Zheng Wei	Art Unit 2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213..

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 31-37 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☐ Claim(s) 1-18 and 31-37 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. This office action is in response to the amendment filed on 08/13/2007.
2. Claims 2, 3, 4, 6, 8-12, 14-16 and 18 have been amended.
3. Claims 31-37 have been added.
4. Claims objection to claims 4-6, 10-12 and 16-18 is withdrawn in view of Applicant's amendment.
5. The 35 U.S.C. 112 first paragraph rejections of claims 2, 4-6, 8, 10-12, 14 and 16-18 are withdrawn in view of the Applicant's amendment.
6. Claims 1-18 and 31-37 remain pending and have been examined.

Response to Arguments

7. Applicant's arguments filed on 08/13/2007, in particular on pages 7-9, have been fully considered but they are not persuasive. For example:
 - At pages 7 last paragraph and page 8, third paragraph, the applicant contends that Claim 1 is not anticipated by Wang, as Wang does not disclose that the type of operating system is saved or the type is saved in a data record, which examiner respectfully disagrees. As Wang discloses at Figure 4B, step 412, "JAVA PROGRAM DETECTS TYPE OF OS OF LOCAL COMPUTER SYSTEM" and step 414, "JAVA PROGRAM SELECTS JNI IMPLEMENTATION THAT IS APPROPRIATE FOR DETECTED OS", clearly

indicates that the OS type has to be used by Java program to select correct JNI and thus OS type, as an input variable/parameter for running the Java program, has to be save in the computer memory during execution. At the same time, the term "data recorder" can be reasonable interpreted as data record medium which includes the computer memory. Therefore, Wang does disclose the feature about saving the operating system type in a data recorder as recited in claim 1.

- At page 9, third paragraph, the applicant argues that Wang does not disclose the requirements of claims 2, 8 and 14 about detail steps for determining the operating system type by comparing at least one of the data, time and number of bytes of a common file of the operating system. However, the Examiner respectfully disagrees. As to previous Office action, page 9, the Examiner rejected the claims 2, 8 and 14 based on the prior art of Wang and Stevens. Wang does not explicitly discloses the detail steps about how to determine the operating system type, but Stevens does disclose this feature of determining the operating system type by reading and parsing set of specific file. Therefore, Wang and Stevens together do disclose the feature of claims 2, 8 and 14.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 33 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 33

The claim defines the device in claim 1 is a disk drive which was not disclosed in the specification. Rather, the specification discloses that the device includes a hard disk drive, that is not the disk drive itself (see for example, p.6, lines 30, "For example, in one embodiment the device includes a hard disk drive..."). For the purpose of compact prosecution, the Examiner treats the device including a disk drive.

Claim 34:

Claim 34 dependents on claim 33, therefore it is also rejected for the same reason.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 3-6 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (Wang et al., US 6,199,194)

Claim 1:

Wang discloses a method for optimizing device performance, comprising:

- determining an operating system type (see for example, Fig.4B, step 412, “Java Program Detects Type of OD of Local Computer System” and related text; also see step 418 and related text);
- saving the operating system type in a data recorder (see for example, col.5, lines 51-54, “At this point, the JNI implementation can display to the user the detected local system characteristics...”); and
- loading a firmware module based on the saved type (see for example, col.6, lines 48-51, “JNI implementation is provided for a specific OS type and is operative to use the firmware update file for programming local hardware device firmware”).

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Claim 3:

Wang also discloses the method as described in claim 1, further comprising saving the operating system type in a specific address (see for example, col.5, lines 51-54, "At this point, the JNI implementation can display to the user the detected local system characteristics...").

Claim 4:

Wang further discloses the method as described in claim 3, wherein a current pointer to state and address one specific operating system (see for example, col.5, lines 54-56, "After these local system characteristics have been detected, the Java program fetches the appropriate firmware ...". To detect the local system characteristics (state and address), the pointer has to be known to locate the local system).

Claim 5:

Wang also discloses the method as described in claim 4, further comprising incrementing the current pointer to describe changes in the operating system (see for example, col.5, lines 9-11, "a local computer system having a particular OS" and "to computer systems having different operating systems"; also see col.5, lines 54-56, "After these local system characteristics have been detected, the Java program fetches the appropriate firmware ...").

Claim 6:

Wang further discloses the method as described in claim 4, including a second pointer to state which module to load for a specific operating system (see for example, col.6, lines 22-24, "the JNI implementation places the firmware update data into the memory that has been allocated and initialized in operations 436 and 438").

Claim 31:

Wang also discloses the method as described in claim 1, additionally comprising providing a device with a data recorder (see for example, Fig.2, element 208, "Memory" and related text)

Claim 32:

Wang further discloses the method as described in claim 1, additionally comprising selecting a firmware module from a plurality of firmware modules based upon the operating system type saved in the data recorder. (see for example, Figure 4B, steps 414-420 and related text; also see col.5, lines 64-66, "After these local system characteristics have been detected, the Java program fetches the appropriate firmware update...").

Claims 33 and 34:

Wang also discloses the method as described in claim 1, wherein the device includes a disk drive and data recorder comprises a memory incorporated with the disk drive. (see for example, Fig.7, element 720, "RAM", element 722 "ROM" and elements 708-710, disk drive and related text)

Claim 35:

Wang further discloses the method as described in claim 1, wherein the data recorder is incorporated into the device (see for example, Fig.2, element 208, "Memory" in the computer system)

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 7, 9-12, 13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (Wang et al., US 6,199,194)

Claims 7 and 9-12:

Claims 7 and 9-12 are a program product version of claimed method, wherein all claimed limitations have been address and/or set forth above in claims 1 and 3-6. Therefore, as the references teach all the limitation of claims 1 and 3-6, they also

teach the limitations of claims 7 and 9-12 respectively. Thus, they also would have been obvious.

Claims 13 and 15-18:

Claims 13-18 are information handling system version of claimed method, wherein all claimed limitations have been address and/or set forth above in claims 1 and 3-6. Therefore, as the references teach all the limitation of claims 1 and 3-6, they also teach the limitations of claims 13 and 15-18 respectively. Thus, they also would have been obvious.

14. Claims 2, 8, 14, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (Wang et al., US 6,199,194) in view of Stevens (Curtis E. Stevens, US 6,519,659)

Claim 2:

Wang discloses the method as described in claim 1 about detect local OS type, but does not explicitly disclose how wherein the determining step comprises comparing at least one of the date, time and number of bytes of a common file of the operating system. However, Stevens in the same analogous art of determining type of operating system, discloses the step of how to determine type of operating system (see for example, Fig.6B, step 345-350 and related text; also see col.14, lines15-20, "The process 220 then determines the operating

system by reading a set of specific files and parses the content of the files”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to detect the type of OS in order to further load the firmware driver type (see for example, col.6, lines 48-51).

Claim 8:

Claim 7 is a program product version of claimed method, wherein all claimed limitations have been address and/or set forth above in claim 2. Therefore, as the references teach all the limitation of claims 2, they also teach the limitations of claim 7. Thus, it also would have been obvious.

Claim 14:

Claim 14 is information handling system version of claimed method, wherein all claimed limitations have been address and/or set forth above in claim 2.

Therefore, as the references teach all the limitation of claim 2, they also teach the limitations of claim. Thus, it also would have been obvious.

Claims 36:

Wang discloses the method as described in claim 35, but does not explicitly disclose the data recorder is removable from the device. However, it is well known in the computer art that the data recorder/memory can be added to or removed from the computer system to replace old memory with new larger

memory to update system performance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use this kind of data recorder/memory in the computer system in order to make it possible to improve system performance by updating the data recorder/memory.

Claim 37:

Wang discloses the method as described in claim 1 that data recorder comprises a memory, but does not explicitly disclose it contains diagnostic information.

However, it is well known in the computer art that the data recorder/memory can be used to store any computer readable information including diagnostic information for the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to save the diagnostic information in the data recorder/memory that user can retrieve/loop-up/analyze those information for diagnose/debug purpose.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
16. Applicant's arguments with respect to claims rejection have been considered but are moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zheng Wei whose telephone number is (571) 270-1059 and Fax number is (571) 270-2059. The examiner can normally be reached on Monday-Thursday 8:00-15:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571- 272-1000.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZW



TUAN DAM
SUPERVISORY PATENT EXAMINER